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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------|-------------|----------------------|---------------------------|------------------|
| 10/735,378 | 12/12/2003 | Nicolas Voute | 2035.008A | 1697 |
| 23405 | 7590 | 03/20/2006 | EXAMINER | |
| HESLIN ROTHENBERG FARLEY & MESITI PC | | | DOERRLER, WILLIAM CHARLES | |
| 5 COLUMBIA CIRCLE | | | ART UNIT | |
| ALBANY, NY 12203 | | | PAPER NUMBER | |

3744

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------|--------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/735,378 | VOUTE ET AL. | |
| | Examiner | Art Unit | |
| | William C. Doerrler | 3744 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6-14-04, 6-21-04, 12-13-04</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all independent claims, state that the first and second dimensions are different. It is unclear whether this is referring to different sides of different containers (length vs. width) or merely containers of different sizes. It is noted that claiming that the first dimension "proportionally corresponds to a second dimension of a bioproduct container for a larger-scale unit, and wherein the first dimension and the second dimension are different dimensions" is seen as claiming that the first and second dimensions are not the same. Any difference is seen as proportional. In claims 33,35 and 37, is thickness referring to the thickness of the material which constitutes the container or the depth (distance between the front and rear surfaces) of the container.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,7-10,12-16,19,21,22,24-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Benders (3,586,097).

Benders shows in figure 5 an apparatus having multiple chambers with opposing surfaces which are in contact with heat transfer pipes (51) winding around the surface, with the width of the chamber designed to closely match the width of a bloodbag. The device of Benders can be used to both freeze and thaw a bioproduct. The dimensions of the bloodbag will be proportional to some other bioproduct container, such as a larger bag (applicant has not specified what the other container may be). As currently written the claim is met by using a container that is smaller in at least one aspect to any other container which might possibly be used for a bioproduct. This can include a grocery bag, as meat and vegetables could be seen as biological products. In the claims "proportionally corresponds" is also seen to bear no patentable weight as the proportional ratio may be any number from slightly greater than zero to near infinite. Because of the incredible breadth of the claims, claims 33-38 are seen as met by Benders, as "proportionally" and the large range of sizes for containers allows just about any size container to meet the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,11,17,18,20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benders in view of Lavender.

Benders discloses applicant's basic inventive concept, an apparatus to transfer heat to a contained bioproduct with surfaces contacting the container of material, substantially as claimed with the exception of clamps to hold the container in place and removable dividers. Lavender shows these features to be old in the art (figure 1 shows the dividers and figures 5 and 6 show the containers being fastened to the wall). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Lavender to modify the thermal treatment device of Benders by using dividers to produce individual treatment zones which are easily loaded and unloaded and fastening the containers to the walls to promote heat transfer.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams et al shows a device for freezing and thawing biological fluids. Heschel et al shows a cooler with movable heat transfer plates to enable cooling of different sized containers. Rilling et al shows a cooler which can cool a plurality of different sized containers. Petersen shows a cooler with dividers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William C Doerrler
Primary Examiner
Art Unit 3744

WCD